H 7 (6)

A magistrate may dismiss a – on the report of police without hearing.

1871

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H7(6)

MEMO. No. 3540.

Dated Lahore, 26th June 1871.

To

ALL POLICE OFFICERS.

POLICE.

A Magistrate after the issue of process may, under Sec. 67 Criminal Procedure Code, dismiss a complaint on the report of the police without hearing the complainant or his witnesses.

The following ruling by the Chief Court in the case of *Crown* v. *Imám Ali*, is published for the information of police officers, with a view to their drawing the attention of Station House Officers to the importance attached to their reports and the consequent necessity for the exercise of special care that inaccurate impressions are not conveyed.

2. Loose wording on the part of an inquiring officer may prevent a complainant obtaining a hearing.

G. HUTCHINSON, *Lieut.-Col.,*
Inspector General of Police, Punjab.

REVISION SIDE. CRIMINAL.

Case reported by the Inspector General of Police with No. 3363 *of* 10*th June* 1871, *under Section* 404 *Criminal Procedure Code.*

The Crown, on the complaint of Yúsaf Khan, *versus* Imám Ali, accused.

CHARGE.—*Cheating under Section* 417 *Indian Penal Code.*

The facts of this case are as follows :—

The complainant served the Government during the mutinies, and tried, subsequently, to obtain a pension. In 1869 the accused wrote a petition for him to the Inspector General of Police, and one to the Governor General. In May of that year Government granted complainant compensation (for losses sustained in the mutiny) amounting to Rs 400. Of this he gave Rs. 60 to the accused, and promised him Rs. 100 if he should obtain a pension. Shortly afterwards the complainant received a forged parwana purporting to be from the Governor General, dated June

1869, promising a pension, but ordering him to report his case on a twelve rupee stamp. He went to Lahore, and the accused wrote the report and bought the stamp. (Had the complainant been examined, it would have come out that the stamp was a colored bale ticket). Twice subsequently petitions were written for the complainant on similar stamps valued at Rs. 8 and Rs. 4 to the Governor General and Inspector General.

The Under-Secretary to Government Punjab received for disposal a petition on plain paper, written in the name of complainant, from the Governor General. In the petition mention was made that Yusaf Khan had paid all the stamp duty required, and wondered at not getting his pension.

Inquiry was ordered, as the facts were peculiar.

The accused was arrested on a warrant issued by Mr. Moore, the Deputy Commissioner of Lahore, exercising the powers of a Magistrate, and admitted to bail agreeably to the terms of the warrant.

On the 30th March the accused was discharged by order of Mr. Moore.

The proceedings are forwarded for revision on the following grounds:—

The complainant was never examined (though present) as required by Section 66 Criminal Procedure Code.

It may be said that this was unnecessary, as the action taken was probably taken under Section 133 Criminal Procedure Code. It is submitted that a warrant having been issued, the Magistrate must be held to have accepted and not dismissed the complaint, and therefore that he could not discharge the accused without recording the evidence of the complainant and his witness as required by Section 250 Criminal Procedure Code. (Queen *versus* Sheikh Edoo, 2, S. W. R. Cr. R. 47; Madras High Court Pro. 1526 of 12 August 1870. 6 Madras Jurist 63; Bilash *versus* Makru. [this was a case under Chapter XV, but the same principle holds.] 2 Bengal L. R. Notes 15; Dulali Bewa *versus* Bhuban Shaha and others, where a complaint was dismissed on the perusal of the police papers, 3, B. L. R. App. Cr. 53; Denonath Gope *versus* Saroda Mukhopadhia and others, (in the present case Ahmad should have been called as a witness to the receipt of the purwana), 7 S. W. R. Cr. R. 47; Queen v Harrak Chand Nowlaka and others, so far as it rules that a Magistra cannot throw out any complaint without examining the complainant. 8. S. W. R. Cr. R. 12; Queen *versus* Heera Lall Ghose 13 S. W. R. Cr. R. 37.

In all the cases in the books in which dismissals of complaints have been upheld by the High Court, the complainant was examined.

As the accused was not discharged under Section 250 Criminal Procedure Code, for that Section was not complied with, I have assumed the complaint was thrown out and that discharge followed in consequence.

It is submitted that the Magistrate acted irregularly in declaring the accused to have been of unsound mind without even seeing him, and without adopting the procedure enjoined in Section 388 Criminal Procedure Code.

As cheating is not an offence triable by the Court of Session or Magistrate of the District, and therefore not one in which the Court of Session can order a commitment under Section 435 Criminal Procedure Code, I submit it to the Chief Court and solicit an order for enquiry and trial according to law.

(By order,)

(Signed) E. NEWBERY,

Assistant to Inspector General of Police Punjab.

Copy of para. 1 *of a letter No.* 2,049 *dated* 16*th June* 1871, *from Registrar Chief Court Punjab, to Inspector General of Police Punjab.*

I am directed to return the file received with your No. 3368 of 10th June, and to state that there seems no necessity for commenting on the Magistrate's proceedings in the case. The report of the Inspector of Police shows that there was no proof of the allegations made by the complainant Yusaf Khan against Imam Ali Baboo, and the Magistrate apparently found no ground for proceeding any further in the enquiry.

His remark that the complainant and accused were both fools was evidently not such as required to be supported by a formal enquiry under Section 388. He did not profess to stay proceedings on that ground. He merely dismissed the complaint under the discretionary power vested in him by Section 67, there being in his judgment "no sufficient ground for proceeding."